

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BRUCE A. ROATH,)	
)	
Petitioner,)	
)	
v.)	No. 4:07CV1105(ERW)
)	
DAVE DORMIRE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the application of Bruce A. Roath, a state prisoner at the Jefferson City Correctional Center (JCCC), for a “Writ of Habeas Corpus Pursuant to § 2241(c)(2-3)” [Doc. #1]. See Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts.¹

The petition

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging a state court conviction. Liberally construing the petition, petitioner was denied habeas corpus relief pursuant to 28 U.S.C. § 2254 by the United States District Court, Western District of Missouri. Petitioner alleges that the Western District’s order was procured through fraud. Petitioner now asks this Court to issue him a writ of habeas corpus to achieve his release from confinement.

¹Because petitioner is in custody pursuant to the judgment of a State court, petitioner can only obtain habeas relief through 28 U.S.C. § 2254 - not § 2241 - no matter how his pleading is styled. Crouch v. Norris, 251 F.3d 720, 723 (8th Cir. 2001).

Discussion

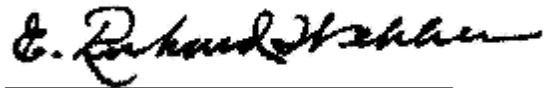
The instant petition for a writ of habeas corpus will be denied. This is the third action that petitioner has initiated in this Court trying to sidestep the denial of § 2254 habeas relief by the Western District of Missouri. See Roath v. Kemna, No. 4:06CV1551(RWS) (E.D. Mo.); Roath v. State of Missouri, No. 4:04cv48(TCM) (E.D. Mo.). In those prior actions, petitioner sought an order from this Court that would effectively vacate the judgment of the Western District of Missouri in Roath v. Purkett, No. 4:94-CV-1052-DW (W.D. Mo.), which denied petitioner a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Eighth Circuit Court of Appeals dismissed petitioner's appeal of the Western District's order. Roath v. Purkett, No. 96-1823 (8th Cir. May 1, 1996). The Eighth Circuit has also denied petitioner leave to file a second or successive habeas corpus petitions. In re Roath, No. 00-2620 (8th Cir., Aug. 18, 2000); In re Roath, No. 00-3976 (8th Cir. May 4, 2001). On October 8, 2004, Judge Dean Whipple, United States District Judge for the Western District of Missouri, entered an order directing the Clerk of Court for the Western District not to accept any pleadings concerning the habeas case and directing petitioner to address all future pleadings to the Eighth Circuit Court of Appeals in the form of an application to file a second or successive habeas petition pursuant to 28 U.S.C. § 2244(b)(3)(A). Based on the above, petitioner may not obtain habeas relief from this Court under § 2241 or any other law.

In accordance with the foregoing,

IT IS HEREBY ORDERED that the Clerk shall not issue process or cause process to issue upon this matter because it plainly appears from the face of the application that petitioner is not entitled to relief from this Court.

An appropriate order shall accompany this memorandum and order.

So Ordered this 21st Day of August, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE